

**Exhibit 10-D Consultant Agreement Outline****CONSULTANT AGREEMENT OUTLINE****A. INTRODUCTION**

The introduction includes the following information:

**1. Date of Agreement****2. Names, Addresses and Other Data Identifying Agreeing Parties**

State the complete name and address of each party to the agreement together with information with respect to whether the party is an individual, an agency of government, a partnership, or a corporation. If a corporation is one of the parties, show the State of Incorporation and the location of the office, where the consultant's work will be available for inspection by local agency and state representatives. For the sake of brevity, a suitable short title, such as "State," "County," "Engineer" or "Consultant," is designated and defined for each of the parties and used throughout the remainder of the agreement.

**3. Location and Description of the Project.**

State the location and description of the project as precisely, and as briefly as possible. Give the name of the project, if one exist. If major structures are to be included their approximate locations, lengths, and types, if known, are to be shown.

**4. Name of Contract Administrator**

All (3 or 4) references to . . . "NEPA compliance not being complete until FHWA approves the CE, EA/FONSI or EIS/ROD". . . need to be expanded to read: "Compliance with the provisions of NEPA occurs only after FHWA signs the Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) or Record of Decision (ROD) and all mitigation commitments have been fully incorporated (constructed and/or implemented) into the action." (Ref: 23 CFR 771.105 (d) Measures necessary to mitigate adverse impacts be incorporated into the action).

**B. AGREEMENT****1. Description of Work to be Done****a) Consultant Services**

Detail based on the services to be furnished by the consultant. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. It also includes any milestones and due date of each milestone; description of the deliverables; form of the deliverables; and effort involved in each deliverable. Describes acceptance criteria. Environmental documents are not considered complete until final FHWA and/or state approval. A signed CE, FONSI, or published ROD is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of the *Local Assistance Procedures Manual* [LAPM]).

**b) Right of Way**

State whether Right of Way requirements are to be determined and shown by the consultant; whether land surveys and computations with metes and bounds descriptions are to be made; and whether Right of Way plots are to be furnished.

c) Subsurface Investigations

State specifically whether or not the consultant has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the consultant, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in Chapter 8 of “Caltrans’ Environmental Handbook” Volume 2 *Cultural Resources*.

d) Surveys

State whether or not the consultant has the responsibility for performing preliminary or construction surveys.

e) Local Agency Obligations

All data applicable to the project referred to in the agreement and are in possession of the local agency or another agency, or government are to be made available to the consultant. Any other assistance or services to be furnished to the consultant are to be stated clearly.

f) Conferences, Meetings, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state or FHWA

g) Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings.

h) Consultant’s Services During Construction

The extent, if any of the consultant’s services during the course of construction as material testing, construction surveys. etc., are specified in the agreement together with the method of payment for such services.

i) Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications or Right of Way plots are specified. The type of media reports, plans, specifications, etc., are to be submitted. Provisions may be made for payment for additional copies.

## **2. Date of Beginning and Completion**

Beginning and ending dates must be specified for work under the agreement. Usually the beginning date is a given number of days after a letter of notification has been sent to the consultant. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

## **3. Payments**

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The agreement establishes a method of payment as the work progresses, or as each unit is completed; and for final settlement after all work is delivered, accepted, and approved. The agreement sets a maximum limit on the total amount payable. This also applies to all subcontracts in excess of \$25,000.

## **4. Record Retention**

The agreement states the period of time that the consultant's records shall be retained for inspection by the state, FHWA, or their duly authorized representatives. This time period must be at least three (3) years after final payment to the consultant by federal statute. This also applies to all subcontracts in excess of \$25,000.

## **5. Cost Principles**

The agreement must state that the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also, the agreement must include the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This also applies to all subcontracts in excess of \$25,000.

## **6. Miscellaneous Provisions**

### **a) Covenant Against Contingent Fees**

All agreements for consultant services in which federal funds are to participate shall contain the following clause:

“The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.”

### **b) Design Standards**

The agreement includes reference to the appropriate standards for design or other standards for work performance stipulated in the consultant agreement.

### **c) Documentation**

Agreements, where appropriate, shall provide that the consultant document the results of the work to the satisfaction of the local agency, and if applicable, the state & FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

### **d) Ownership of Documents**

The agreement provides that tracings, plans, specifications, and maps prepared, or obtained under the terms of the agreement be delivered to and become the property of the local agency. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under such agreement shall be made available upon request to the local agency without restriction or limitation on their use. When an agreement is for preliminary plans only, no commitment should be stated or implied that would constitute a limitation of the subsequent use of the plans, or ideas incorporated therein for preparation of construction plans.

e) Patent Rights

Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in agreements as appropriate.

f) Copyrights

The local agency may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the FHWA and state shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use the work for government purposes.

g) Changes in Work

The agreement contains provisions that permit mutually acceptable changes in the scope, character, or complexity of the work; if such changes become desirable or necessary as the work progresses. A method should be established for making adjustments to the basis of payment, and to the time for performance of the work. Provision are made for special cases where it is essential that the extra work be performed immediately with execution of a supplemental agreement covering the changes as soon as possible.

h) Delays and Extensions

The agreement provides for an appropriate extension of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment.

i) Termination or Abandonment

A procedure covering among other things, the ownership of work completed or partially completed, including the basis of payment, is established in the event of termination of the agreement prior to completion of the work. Conditions for termination due to default and circumstances beyond the control of the contractor are included.

j) Remedies

Provision(s) are included allowing administrative, contractual, or legal remedies for violation or breach of contract terms, citing appropriate sanctions and penalties.

k) Disputes

The agreement provides for a procedure to resolve any dispute concerning a question of fact in connection with the work not settled by agreement between the parties. Such procedures should conform to the practice followed by the local agency in resolving disputes in other contractual matters.

l) Responsibility for Claims and Liability

The consultant shall be required to save harmless the local agency or other agency of government from all claims and liability due to his/her negligent acts, or the negligent acts of his/her subcontractors, agents or employees.

m) General Compliance with Laws and Wage Rates

The consultant shall be required to comply with all federal, state and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

n) Subcontractors, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract.

o) Consultant's Endorsement on PS&E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR Part 26, and in Exhibit 10-I "*Notice to Bidders/Proposers Disadvantaged Business Enterprise Information.*" If the contract has an under-utilized DBE (UDBE) goal, the consultant must meet the UDBE goal by using UDBEs as subconsultants or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant if the goal is not otherwise met.

q) Insurance

The contract should provide for professional liability insurance and vehicle liability insurance limits. The contract should specify the reasonable amounts of such insurance, as required by the local agency. A method of verifying that the insurance is in effect should be included. Also, a method of notifying the local agency, if the specific insurance has been changed or cancelled should also be in the contract.

r) Signature Blocks

A signature block for each of the parties to the agreement should be provided.

## C. CONCLUSION

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

## D. SIGNATURE

## E. CERTIFICATIONS

Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" must be included as attachments to the contract and made a part of.

## F. COST PRICE PROPOSAL

The consultant's and subconsultant(s) final cost proposal must be attached to the contract (see Exhibit 10-H "Sample Cost Proposal").